STATE OF MICHIGAN

COURT OF APPEALS

JAKE HELSEL and GINGER HELSEL, Plaintiffs-Appellees, v FARM BUREAU INSURANCE COMPANY, Defendant-Appellant.	UNPUBLISHED May 23, 2006 No. 258455 Crawford Circuit Court LC No. 03-006093-CK

Before: Borrello, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals the trial court's order that denied defendant's motion for partial summary disposition on one count of plaintiffs' complaint. Pursuant to an order of this Court, we also address whether the trial court correctly denied plaintiffs' motion to amend their complaint. We affirm the trial court's denial of plaintiffs' motion to amend their complaint, but reverse the trial court's denial of defendant's motion for partial summary disposition.

I. Summary Disposition

Defendant says that the trial court erred by denying its motion for partial summary disposition as to Count IV of plaintiffs' complaint. We review a trial court's denial of a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The disputed count of the complaint constitutes an assertion of a tort claim for bad-faith breach of an insurance contract. Clearly, under Michigan law, there is no tort claim for bad-faith breach of an insurance contract. *Kewin v Massachusetts Mut Life Ins Co*, 409 Mich 401, 422-423; 295 NW2d 50 (1980); *Burnside v State Farm Fire & Casualty Co*, 208 Mich App 422, 425 n 1; 528 NW2d 749 (1995). We further note that even if we view the count not as an attempt to set forth an independent tort claim but rather as merely a request for emotional damages for defendant's alleged breach of contract, defendant would be entitled to partial summary disposition because our Supreme Court has ruled that a plaintiff may not claim damages for mental pain and suffering based on mere bad-faith breach of an insurance contract. *Kewin, supra* at 423.

The trial court also stated as part of its rationale for denying defendant's motion for partial summary disposition that plaintiffs made out a prima facie case of intentional infliction of

emotional distress. Yet, the complaint does not include any express claim for intentional infliction of emotional distress. Moreover, the only wrongful conduct alleged in the complaint is that defendant refused to pay plaintiffs' entire claim and "otherwise refused to observe the terms and conditions of the insuring agreement." An essential element of an intentional infliction of emotional distress claim is extreme and outrageous conduct. *Hayley v Allstate Ins Co*, 262 Mich App 571, 577; 686 NW2d 273 (2004). This Court has unambiguously held that even a bad faith failure to pay insurance benefits does not amount to outrageous conduct. *Id*. Thus, as a matter of law, plaintiffs' allegation that defendant failed to pay their entire insurance claim cannot support a claim of intentional infliction of emotional distress. Plaintiffs' remaining allegation that defendant "otherwise" failed to observe terms and conditions of an insurance agreement is simply too vague and conclusory to state a claim. *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003) ("Conclusory statements, unsupported by factual allegations, are insufficient to state a cause of action."). Thus, defendant was entitled to partial summary disposition under MCR 2.116(C)(8) with regard to any claim for intentional infliction of emotional distress. *Maiden, supra* at 119-120.

II. Motion to Amend Complaint

Plaintiffs argue that the trial court erred by denying their motion for leave to amend their complaint. We review a trial court's denial of a motion for leave to amend a pleading for an abuse of discretion. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996).

Plaintiffs' proposed amendment would have altered only two paragraphs of their complaint. First, plaintiffs' alteration to refer to a supposed "implied duty" to act in good faith does not change the fact that, under Michigan law, there is no independent tort action for bad-faith breach of an insurance contract. *Kewin, supra* at 422-423; *Burnside, supra* at 425 n 1. Plaintiffs' second proposed change is to add a conclusory allegation that defendant acted "in an extreme or outrageous manner" that intentionally or recklessly caused plaintiffs emotional distress. Such a conclusory allegation is insufficient to state a cause of action. *Churella, supra* at 272. Thus, the trial court did not abuse its discretion in denying plaintiffs' motion for leave to amend their complaint because the contemplated amendment would have been futile, *Jenks, supra*, 215 Mich App 419-420.

We affirm the trial court's denial of plaintiffs' motion for leave to amend their complaint, but reverse its denial of defendant's motion for partial summary disposition. We remand this case to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Henry William Saad
/s/ Kurtis T. Wilder